the federal government it is doubtful whether any branch of economic life can permanently remain within the control of the states. The doctrine of *Osborn* v. *Bank* must, then, be applied with caution. Congress should be permitted to authorize federal agencies to engage in incidental private activities only when clearly essential, and not when merely appropriate, to the continued performance of their governmental functions. See *Osborn* v. *Bank*, *supra*, 861.

CONSTITUTIONAL LAW — THE RIGHT TO VOTE — STATUTE UNCONSTITUTIONAL IN PART — WHO MAY SET UP UNCONSTITUTIONALITY. — A statute provided that "all ballots shall be void which do not contain first-choice votes for as many candidates as there are offices to be filled" (1914, NEW JERSEY LAWS, 174). In accordance with this enough ballots were rejected to cause the defeat of the relator and the election of the respondent. The relator brought an information in the nature of *quo warranto*, contending that this provision was a violation of the constitutional guarantee of the right to vote. *Held*, that the court will not decide the question of constitutionality, for if the contested clause is unconstitutional the whole statute must fail and the election will be void, so the relator can have no title to the office in any event. *Daly* v. *Garven*, 101 Atl. 272 (N. J.).

The clause in question would seem to be a mere regulation of the manner in which the right to vote is to be exercised, and therefore constitutional. *Farrell* v. *Hicken*, 125 Minn. 407, 147 N. W. 815. *Cf. Adams* v. *Landsdon*, 18 Idaho 483, 110 Pac. 280. Wherever possible a court will avoid passing on the question of constitutionality. *Sayles* v. *Walla Walla County*, 30 Wash. 194, 70 Pac. 256. But assuming that the clause is unconstitutional, the question arises whether the remainder of the statute is separable or must fall with it. The proper test is whether the statute with the unconstitutional part exscinded conforms to the legislature's intent in passing it and may be maintained without that part. *Spraigue* v. *Thompson*, 118 U. S. 90; *Reed* v. *Omnibus R. R. Co.*, 33 Cal. 212. See 20 HARV. L. REV. 495. When part of an act fails, no presumption exists in favor of the remainder. *South, etc. Alabama R. Co.* v. *Morris*, 65 Ala. 193. See COOLEY, CONSTITUTIONAL LIMITATIONS, 248 *n.* But nevertheless the decision on this point seems too strict. *Cf. O'Brien* v. *Krenz*, 36 Minn. 136. If the whole statute falls, however, the election is void and the relator has no title. He cannot therefore attack the title of the respondent. *Manahan* v. *Watts*, 64 N. J. L. 465, 45 Atl. 813. But even if the provision is separable the decision of the case is probably right, as the presence on the official ballot of a statement that ballots not complying with an unconstitutional regulation would be thrown out might well be held sufficient cause for avoiding the election, since it would be impossible to determine what the result would have been but for that statement. *Cf. Jones* v. *Glidewell*, 53 Ark. 161.

HUSBAND AND WIFE — COMMUNITY PROPERTY — LIABILITY OF COMMUNITY PERSONALTY FOR THE TORT OF THE HUSBAND. — The plaintiff sought to subject the community personal property to execution in order to satisfy a judgment for the husband's tort, not committed in the management of the community property. *Held*, that the community personal property is not liable. *Schramm* v. *Steele*, 166 Pac. 634 (Wash.).

The general principle underlying the system of community property, which is recognized in eight American states, is that all acquisitions of a husband and his wife during marriage belong beneficially to both. See BALLINGER, COMMUNITY PROPERTY, chap. 1; 24 HARV. L. REV. 652. In general the community property is liable for the separate debts of the husband, as its management and disposition are vested solely in him. *Davis* v. *Compton*, 13 La. Ann. 396; *Schuyler* v. *Broughton*, 70 Cal. 282, 11 Pac. 719; *Lee* v. *Henderson*, 75 Tex. 190,